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VIA CM/ECF & HAND DELIVERY

The Honorable Christopher J. Burke
J. Caleb Boggs Federal Building
844 N. King Street, Unit 28, Room 2325
Wilmington, DE 19801-3555

Re: *National Steel Car Limited v. FreightCar America Inc.*,
C.A. No. 24-594-JLH-CJB

Dear Judge Burke,

The parties jointly write on behalf of our clients, Plaintiff National Steel Car Limited (“NSC”) and Defendant FreightCar America, Inc. (“FreightCar America”), in response to the Court’s November 27, 2024 Order (D.I. 32) regarding submission of a proposed scheduling order and a copy of the Court’s Case Management Checklist.

I. Brief Description of the Case

This is a patent infringement case involving industrial rail cars. The parties bid to supply rail cars with open-top hoppers and bottom discharge to the Canadian National Railway Company (“CN”) for use on the Duluth, Missabe and Iron Range Railway (“DMIR”). CN awarded the contract to FreightCar America. NSC contends that the railcars FreightCar America sold to CN infringe NSC’s U.S. Patent Nos. 8,166,892 and 8,132,515 and that FreightCar America’s infringement is willful. NSC filed this lawsuit on May 17, 2024.

FreightCar America has not yet answered and has moved to dismiss NSC’s claims of willful and induced infringement. (D.I. 21, 28.) NSC opposed. (D.I. 27.) The motion is fully briefed and awaiting decision. Discovery has commenced, but the parties have not yet served any discovery requests or taken any depositions.

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II. Scheduling Order Disputes

The parties' main dispute concerns the case schedule. The parties' respective proposals are attached as Exhibit A to the joint proposed scheduling order. The parties' positions on the schedule are as follows:

NSC's position: This is a straightforward patent infringement case regarding mechanical technology. NSC proposed an initial schedule that would set trial for June 2026—more than two years from the May 2024 filing date. FreightCar America proposed a trial in December 2026. NSC offered to split the difference, with fact discovery closing November 2025, a dispositive motions hearing in June/July 2026, and trial in September/October 2026. FreightCar America declined, offering only to move its dates up by a couple of weeks.

NSC's schedule is reasonable and consistent with the Court's and Judge Hall's practice.¹ The straightforward nature of this case does not necessitate three additional months of fact discovery as proposed by FreightCar America. The patents are mechanical patents, the accused products are rail cars with sales expected to have a limited scope of customers, and there is no need for source code discovery. FreightCar America's claim construction schedule is likewise unnecessarily long. For example, FreightCar America offers no reason why the parties would need nearly six weeks to offer claim terms for construction after service of invalidity contentions, or why the claim construction hearing should be delayed for nearly three months

¹ See, e.g., *InQuisient Inc. v. ServiceNow, Inc.*, C.A. No. 22-900-CJB, D.I. 31 (D. Del. Dec. 21, 2022) (Burke, J.) (setting October 7, 2024, trial date in Scheduling Order proposed in December 2022); *Align Technology, Inc. v. 3Shape A/S*, C.A. No. 18-1949-RGA, D.I. 54 (D. Del. Apr. 2, 2020) (Hall, J.) (setting close of fact discovery and trial at 10 and 22 months after proposed scheduling order).

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following the submission of the joint claim construction brief. Thus, Plaintiff's position is more reasonable in light of the technology, the accused products, and the expected scope of the case.

FreightCar America's position: Because the parties have not yet conducted any discovery or exchanged contentions, and FreightCar America has not answered the complaint, this case is in its initial stages. FreightCar America's proposed schedule would have fact discovery close in approximately one year and would set trial for approximately two years from now. These periods are reasonable and consistent with Judge Hall's practice.² FreightCar America respectfully submits that its more reasonable schedule should be adopted.

III. Most Significant Checklist Items

The parties discussed the checklist during their December 12, 2024 meet and confer and were largely in agreement regarding most items. However, the parties disagree on whether expert declarations submitted in connection with motion practice, but after the deadline to serve the relevant expert report, may include expert opinions not disclosed in the report. They may also disagree on the number of custodians whose email should be searched. Regarding readiness for ADR, NSC stated that it would be timely when FreightCar America produces its sales information for the accused products. FreightCar America stated that service of NSC's infringement contentions would facilitate the parties' discussions in the ADR proceeding.

² See, e.g., *Intellectual Ventures I LLC v. Ubiquiti Inc.*, No. 1:23-cv-00865, D.I. 24 at 15-16 (D. Del. June 21, 2024) (Judge Hall setting close of fact discovery and trial for more than 15 and 26 months after proposed scheduling order); *Multifold International Incorporated Pte. Ltd. v. Motorola Mobility LLC*, No. 1:23-cv-01173, D.I. 24 & D.I. 26 at 19-20 (D. Del. Apr. 29, 2024) (Judge Hall setting close of fact discovery and trial for more than 16 and 27 months after proposed scheduling order).

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Respectfully Submitted,

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cc: Clerk of Court (by CM/ECF & Hand Delivery)
All Counsel of Record (by CM/ECF & Email)